

A Summary of the Requirement that Uses of Water Rights in Rhode Island Must be Reasonable  
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For over one hundred and seventy-five years, the common law of Rhode Island has restricted water rights by requiring that the use of these rights be reasonable. These restrictions have applied to surface waters, including both those that are part of well-defined water bodies and those that are not; and to groundwater.

In 1827, in the famous case *Tyler v. Wilkinson*, 24 F. Cas. 472 (D.R.I. 1827), the court examined surface water rights under the riparian system of Rhode Island. It held that a surface water right is the right to use water, not a property right in the water itself:

Prima facie every proprietor upon each bank of a river is entitled to the land, covered with water, in front of his bank, to the middle thread of the stream, or, as it is commonly expressed, usque ad filum aquae. In virtue of this ownership he has a **right to the use of the water ... . But, strictly speaking, he has no property in the water itself**; but a simple use of it, while it passes along. 24 F. Cas. 474 [emphasis added].

The court then examined what this riparian right to use water entailed. The court held that “reasonable use[s]” of these waters were permitted: “There may be, and there must be allowed of that [right], which is common to all, a reasonable use.” *Id.* In determining whether a use was reasonable, “The true test of the principle and extent of the use is, whether it is to the injury of the other proprietors or not.” *Id.*

To assess whether an injury occurred, the court then relied upon the principles of nuisance law, quoting the maxim that serves as its starting point, “*Sic utere tuo, ut non alienum laedas.*” [Roughly: Thus to use yours so that you do not injure the property of another.] *Id.* Nuisance law itself makes reference to the principle of reasonableness, finding that intentional invasions of the use and enjoyment of land that are substantial and unreasonable are nuisances.

Thus, for a long time, the common law has held that riparian rights in Rhode Island are limited by the requirement that the uses to which they are put must be reasonable.

A more recent case, *Butler v. Bruno*, 115 R.I. 264; 341 A.2d 735; 1975 R.I. LEXIS 1149; 93 A.L.R.3d 1183 (R.I. 1975), extended this principle to surface waters that are not “part of a well-defined body of water or a natural watercourse.” 115 R.I. 267. In this case, the defendant deflected rainwater runoff that previously had collected on defendants property instead onto the plaintiffs’ property. To determine whether the defendant would be liable for damages from this particular use of the water, the Rhode Island Supreme Court “adopt[ed] the rule of reasonable use.” 115 R.I. 274.

The common law has also held that the use of groundwater must also be reasonable. In 1934, the Rhode Island Supreme Court in *Rose v. Socony-Vacuum Corporation*, 54 R.I. 411; 173 A. 627 (R.I. 1934), held that groundwater rights did not permit unreasonable conduct in the use of that groundwater. *See*, 54 R.I.414-416. The court held that negligent acts in the use of groundwater, and which injured another’s legal rights, would constitute a nuisance. Recall that a negligent act is an act that is found to be “unreasonable” under the circumstances. Extension of

nuisance liability for negligent acts in the use of groundwater thus implies a limitation that groundwater rights are limited to reasonable uses.

More recently, the Rhode Island Supreme Court extended this principle to find that “unreasonable injuries” resulting from the use of groundwater would also constitute a nuisance. In *Wood v. Picillo*, 443 A.2d 1244 (R.I. 1982), the Court held that in determining whether a particular use of groundwater constituted a nuisance, “liability in nuisance is predicated upon unreasonable injury rather than upon unreasonable conduct.” 443 A.2d 1247. Thus, under this holding, groundwater rights do not entitle someone to use groundwater in such a way that causes an unreasonable injury.